IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.721 OF 1991

1. Shri Sambhaji Ramchandra
Pawar Patil aged 37 years.
2. Shivaji Ramchandra Pawar
Patil, aged 35 years
Both agriculturist and
Resident of Tadsar,
Taluka Khanapur,
District Sangli .. Appellants.

Vs.

1. Madhavram Abaji Pawar
Patil, aged 63 years.
(Deceased through LRs)
1a. Sindutai Mahadeo Patil
aged 60 years. ..
1b. Sindubai Mahadeo Patil
aged 50 years ..
1c. Rajkumar Mahadeo Patil
age 35 years ..
1d. Sou.Ranjana Arvind Jadhav
aged 32 years ..
1e. Dilip Mahadeo Patil
aged 30 years ..
1f. Suryakant Mahadeo Patil
aged 25 years.
Nos.a to c, e and f Resident of
Tadsar, Taluka Khanapur,
District Sangli, No.d Resident
of C/o.Arvind Gajanan Jadhav
Dy.Engineer, Warnawati Colony,
Taluka Shirala, District Sangli ..
2. Subhash Ramchandra Pawar Patil
aged 33 years
3. Ramchandra Tukaram Patil
aged 70 years
Nos.1 and 3 agriculture no.2
serice nos.1 and 3 Resident of
Tadsar, Taluka Khanapur,
Dist.Sangli, No.2 Resident of
S.T.Depot, Narayangaon,
Taluka Junnar, Dist.Pune .. Respondents.
Respondent.

Mr.R.A.Thorat i/b Mr.V.A.Thorat for the appellants.
Mr.V.S.Gokhale for respondent no.1(c), 1(e) & 1(f).

CORAM : D.B.BHOSALE, J.

DATED : 21ST FEBRUARY, 2007

ORAL JUDGMENT :

. This appeal is directed against the concurrent judgments of the courts below by which the appellants-plaintiffs' suit for injunction simplicitor stands dismissed.

2. The appellants-plaintiffs are the sons of defendant no.4 - Ramchandra Patil. Defendant no.1 - Madhavram, defendant no.2 - Pandurang, defendant no.4 - Ramchandra and one Ganpat are the sons of one Abaji. Ganpat died issueless. Defendant no.2 died during pendency of the suit and since no legal representatives were brought on record the suit abated against him. Defendant no.3 is the brother of appellants-plaintiffs. Defendant no.4, the father of the plaintiffs, claim that the suit property was purchased by him out of his separate income in the name of the plaintiffs. In 1971, there was partition between the three branches, that is, defendant nos.1, 2 and 4 when the suit properties were blended with other properties of the joint family. According to the plaintiffs and defendant no.4 the suit properties were allotted to their shares. As against this the case of defendant nos.1 and 2 is that the plaintiffs and defendant No.3 are benamidars in respect of the suit properties. In other words, they purchased suit

property by benami transactions and they are the real owners of the suit lands and that they are in possession thereof. They have denied that the suit lands are self acquired properties of defendant no.4.

3. Mr.Thorat, learned counsel for the appellants raised only one contention/question of law. He submitted that the defendants were estopped from contending that the suit lands had come to their share under the partition effected between the parties in 1971, in view of the exact contrary stand taken by them in the earlier suit, being Regular Civil Suit No.98 of 1973 and proceedings arising therefrom. He pointed out that in regular civil suit no.98 of 1973 defendant nos.1 and 2 had specifically contended that the properties mentioned in the said suit were not joint family properties and they were in exclusive possession of the same. In the said suit, the defendants also prayed for injunction. The said suit was decreed in their favour since the partition deed was not produced on record in the said suit. Defendant nos.1 and 2 in the present proceedings, according to Mr.Thorat, took exactly contrary stand. Mr.Thorat did not raise any other contention.

4. To my specific query to Mr.Thorat, learned counsel for the appellants as to whether the

contention/the question of law urged before me was raised before the courts below, though initially he could not make positive statement, after going through the judgments of the courts below fairly stated that the question raised in this second appeal was neither raised nor argued before the courts below. From perusal of the impugned judgments as also the record neither I could find any reference to regular civil suit no.98 of 1973 nor did the appellants place on record either the judgment in the said suit or the pleadings. It is not possible to examine correctness of the submissions advanced by Mr.Thorat. It may be noticed that at no stage of the proceedings either the appellant sought to amend the pleadings or filed an application for additional evidence nor did they brought the judgment and pleadings in the said suit on record. In the circumstances this point cannot be allowed to be raised in the second appeal. The contentions advanced by Mr.Thorat are mixed questions of law and fact and cannot be examined for the first time in this appeal. Mr.Thorat did not raise any other contention. Keeping that in view and considering that there are concurrent findings of fact recorded by the courts below and as I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure

to disturb the findings of fact this appeal stands dismissed. No orders as to costs.

(D.B.Bhosale, J.)